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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Rules and Regulations Implementing
the Telephone Consumer Protection Act
of 1991

CC Docket No. 92-90

REPLY COMMENTS OF EIA/CEG AND TIA

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") and the Telecommunications Industry Association ("TIA") hereby reply to comments filed in response to petitions for reconsideration and clarification of the above-captioned Report and Order ("Order").^{1/} Only a single party, Motorola, Inc., has commented upon the petition filed by EIA/CEG and TIA, and that party has focused its attention solely on the treatment of "fax boards." There has been no opposition to EIA/CEG's request that the Commission reconsider the effective date of the regulations applicable to the manufacture of facsimile machines.^{2/}

EIA/CEG continues to believe that the Commission should take some action to ameliorate the harm caused by

^{1/} FCC 92-443 (released Oct. 16, 1992).

^{2/} For the reasons given in EIA/CEG's and TIA's original petition and in Motorola's supporting comments, fax boards are clearly beyond the reach of the manufacturing requirement.

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inflexible application of the manufacturing deadline. There is no need to recite the many facts and arguments presented in the underlying petition for reconsideration and clarification. Still, a few key points bear particular emphasis:

1. Contrary to an apparent belief in some quarters, EIA/CEG is not seeking to waive a statute but to address a problem caused by a regulation. The statute is in effect; so, too, are the regulations which implement that statute. There is nothing in the statute, however, which precludes the Commission from taking action necessary to avoid gratuitous injury to consumers and to manufacturers. As has been discussed in prior submissions, various mechanisms are available to introduce some flexibility into the manufacturing transition. Specifically, the Commission has opportunities to (1) establish implementation procedures,^{3/} (2) interpret its rules, (3) waive its rules, or (4) suspend enforcement of its rules. Any of these measures could be used to reduce the harsh effect of the deadline, if the Commission determines that to do so would serve the public interest (as we firmly believe it would).

^{3/} For example, the Commission might wish to require that existing Part 68 equipment registrations for fax machines be updated, with attestations of compliance with the date/time/ID stamping requirement, but allow a period of months before such attestations would need to be made. In the interim, continued manufacture under previously issued registration certificates would be permitted.

2. Here, it is clear that the manufacturing requirement is not at all central to the statutory purpose. The requirement that all parties label their fax transmissions (whether they use old or new machines) and the prohibition on transmission of unsolicited advertisements to facsimile machines together achieve 99 percent of what the Congress wanted to accomplish with respect to facsimile transmissions. Both of these statutory provisions are already in effect, and no one has suggested that they be deferred.

3. The request for a measure of flexibility regarding the manufacturing deadline represents the considered position of two industry associations with broad membership, and there has been no opposition from any quarter.

4. Uncontroverted affidavits have testified to millions of dollars of losses for industry if no relief is granted. The Stay Order's characterization of these affidavits as presenting "speculative" "predictions" of injury (¶ 7) is not really responsive to the information that has been presented.^{4/}

^{4/} Moreover, the notion that manufacturers "conceivabl[y] . . . could recover some losses" through consumer purchases of higher priced machines (Stay Order at ¶ 7) represents an acknowledgement that consumers will be forced to pay higher prices sooner if the manufacturing transition is effectuated without flexibility. These extra costs cannot fairly be balanced against "the period in which consumers are burdened (Footnote 4 continued on next page)

5. There remain substantial uncertainties, even now, about precisely which capabilities are required to be incorporated in fax machines. The implementing regulation merely recites the language of the statute, but provides no meaningful guidance on several key questions.^{5/} This is even true with respect to an important issue raised by the one manufacturer (Tandy Corporation) which participated in the earlier phase of this rulemaking.

In short, the present situation imposes needless costs and limitations on consumers and manufacturers, with no corresponding public benefits. The question is not who is to blame.^{6/} The question is: what can be done to prevent needless injury? It is the Commission -- and the

(Footnote 4 continued from previous page)

with the task of manually transmitting sender information for each fax" (Stay Order at ¶ 9) since any consumers who wish to avoid this "burden" would still retain the option to purchase the higher priced machines that handle this function automatically. Strict application of the deadline would accordingly have only negative effects on consumers, as well as on manufacturers.

^{5/} These are detailed in EIA/CEG and TIA's petition for reconsideration and clarification at pages 14-18.

^{6/} Congress can be faulted for not sufficiently thinking through the costs and benefits of the requirement it instructed the Commission to establish. Industry can be blamed for not becoming aware at an earlier date that a statute intended primarily to curb telemarketing abuses also included a provision affecting the manufacture of fax machines.

Commission alone -- which has the power to find a way to ameliorate the harm that otherwise will occur.

We still hope to work cooperatively with Commissioners and staff to fashion a reasonable solution to the problems described in EIA/CEG's and TIA's petition and in the accompanying affidavits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Reply Comments of EIA/CEG and TIA" was served this 21st day of January, 1993, by first class, postage prepaid mail, to:

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